IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.24802 of 2006
SURENDRA MOHAN JHA
Versus
STATE OF BIHAR

With

Cr.Misc. No.24803 of 2006
SURENDRA MOHAN JHA
Versus
STATE OF BIHAR

In both cases

For the petitioner : M/s Tara Kant Jha,
Chittaranjan Sinha, Sr. Advocate &
Sanjeet Kumar, Advocate
For the State : Mr. Jharkhandi Upadhaya, A.P.P.
For O.P. No. 2 : Mr. Dilip Kumar Sinha, A.P.P.

WEB COPY NOT OFFICIAL

O R D E R

The petitioner, common in both cases, Surendra Mohan Jha, Deputy General Manager (Administration) of a Public Limited Company, running in the name and style of M/s Kalyanpur Cement Ltd. (hereinafter referred to as "the Company") along with other officials thereof **are** sought to be prosecuted at the instance of the Forest Department, Government of Bihar, in both the cases on the ground of the Company allegedly using shovel machine, drilling machine, tractor, jeep etc. in the forest area and indulging

in illegal mining operation, notwithstanding the fact that the matter stands concluded finally by a decision of this Court dated 14.9.2006 passed in Cr. Misc. No. 27422 of 2003.

Both these cases have been taken up together for hearing as they happen to be similar in nature and involve identical points of law in issue and having been heard together are being disposed of by this common order.

In Cr. Misc. No. 24802 of 2006 the petitioner has prayed for the quashing of the order dated 20.1.2006 passed by the learned Sessions Judge, Rohtas in Cr. Rev. No. 7 of 2004 whereby the case has been remanded back as also the order dated 12.7.2002 passed by the learned Chief Judicial Magistrate, Rohtas, in Forest Case No. 66 of 2002 whereunder he has taken cognizance under sections 33, 41, 52 Indian Forest Act. In Cr. Misc. No. 24803 the petitioner has prayed for the quashing of the order dated 20.1.2006 passed by the Sessions Judge, Rohtas, in Cr. Rev. No. 308 of 2003 whereby he has remanded the case as also the order dated 31.7.2003 passed by the learned Chief Judicial Magistrate, Rohtas, in Forest Case No. 88 of 2002 whereunder he has taken cognizance under section 33 of

WEB COPY NOT OFFICIAL

the Indian Forest Act and section 2 / 3 of the Forest (Conservation) Act.

Admittedly, the Company is engaged in the business of manufacturing cement for which limestone is a necessary and essential ingredient and for quarrying lime stones the Company has obtained several leases from the State Government over various tracts of land. Past history does not appear to be congenial and reveals that there is constant incompatibility between the Company and its officials on the one hand and the officers of the Forest Department on the other with the latter being given to hurling repeated and unwarranted accusations on the Company and its officials resorting to illegal mining and removing stones from the reserved forest areas falling outside the lease hold lands of the Company and the resultant litigations ending in favour of the Company. The two cases at hand appear to be such cases where there has been a fresh round of accusations by the officials of the Forest Department in respect of illegal mining by the Company from within the lands of Reserved Forest Areas.

WEB COPY NOT OFFICIAL

The prosecution report dated 25.6.2002 under the

signature of the Forestor (*Banpal*) in Forest Case No. 66 of 2002 reveals that 7 officials of the company including the petitioner have been named in the accused column. In the prosecution report it is mentioned that at about 2 P.M. on 13.6.2002 in course of patrolling the officials of the Forest Department in Kachubar Reserve Forest Area found several tractors loaded with stones fleeing away and a shovel machine was found engaged in illegal mining operation. The shovel machine and a tractor loaded with stones were seized and their drivers were arrested.

WEB COPY NOT OFFICIAL

The prosecution report of Forest Case No. 88 of 2002 relates to 2.30 P.M. on 3.10.2002 when the Forest officials on patrolling in Kachubar Reserve forest Area detected a shovel machine and a compressor drilling machine in operation but the same could not be seized due to interference by the huge crowd which had assembled. It is alleged that the said mining operation was being carried out by the officials and staff of the Company who managed to flee.

The joint submission in both cases on behalf of the petitioner is that the Company is a lessee of several tracts of

land in respect of several mines which do not fall within the Forest Areas being operated upon and as such the Company was within its rights to carry on mining operation over the lease hold lands.

From a perusal of the prosecution reports in both the cases, it is apparent that the reports are absolutely vague with regard to the offence alleged and there was hardly anything therein to connect the petitioner and other officials of the Company with the offence. None of the officials, including the petitioner, was seen performing any mining work nor was any forest produce found on the tractor or in the possession of the persons sought to be impleaded as accused. The learned counsel sought to deny that the vehicles seized by the Forest officials belonged to the Company.

WEB COPY NOT OFFICIAL

I have had the occasion to peruse the prosecution report in both the cases and to my mind there is hardly any material to connect the seized articles with the accused persons including the petitioner or with the Company which unfortunately has not even been made party in the prosecution reports.

There is also nothing in the prosecution report to indicate that the alleged illegal mining was being done at the instance of the accused persons, including the petitioner, and the accusations made therein are too vague to call upon the accused persons, including the petitioner, to face trial. To quote the words of Mr. Justice Aftab Alam (as His Lordship then was) in the order dated 14.9.2004 passed in Cr. Misc. No. 27422 of 2003 " *the manner in which the allegation is made against the petitioners reminds one of the quarrelling neighbours in a rural area who tend to lay the blame for every-thing on each other's doors*."

WEB COPY NOT OFFICIAL

The learned counsel appearing on behalf of the Forestor, impleaded as O.P. No. 2 herein, has not been able to justify either the prosecution report or the necessity of trial.

To my mind, the prosecution report did not warrant the issuance of summons against the petitioners and the Courts below committed an error in doing so. In that view of the matter both the orders passed by the learned Chief Judicial Magistrate, Rohtas at Sasaram issuing

summons against the petitioner and the Revisional order by the Sessions Judge, Rohtas at Sasaram are set aside. Both the applications are allowed.

(Abhijit Sinha, J.)

The Patna High Court
The 4th July, 2008
Spd/ A.F.R.

WEB COPY NOT OFFICIAL